



## HOUSING AND ECONOMIC RECOVERY ACT OF 2008

### Impact on Compliance in the Low Income Housing Tax Credit (LIHTC) Program

#### ***No Recertifications Required for 100 Percent LIHTC Properties***

Owners of 100 percent LIHTC projects are not required to complete annual recertifications. However, an owner should not stop completing annual recertifications until hearing from their housing finance agency (HFA) about their plans for implementing this provision of the Act.

#### **Questions for the IRS**

The law refers to 100 percent low-income projects. Is “project” defined per Line 8b of a building’s 8609 form? Does this provision apply only to properties where every building is a 100 percent LIHTC building? Can this provision apply to a 100 percent LIHTC building that is part of a mixed-income property?

Is an owner responsible for making a resident demonstrate continued compliance with the full-time student rule?

If a resident wants to transfer to another building at the same property, and the owner is not completing annual recertifications, must the owner complete a recertification prior to approving the transfer to demonstrate the resident’s income is not more than 140 percent of their current income limit?

This provision is effective beginning with the first year ending after the date of enactment, July 30, 2008.

#### ***Deferred Veteran’s Disability Benefits Excluded from Annual Income***

Deferred disability benefits from the Department of Veterans Affairs received as a lump sum or in prospective monthly payments are excluded from the calculation of annual income when determining eligibility for an LIHTC unit.

The Act makes this change in how an owner calculates annual income in the Section 8 and public housing programs. Because the LIHTC program follows the rules for calculating annual income for the project-based Section 8 program, owners in the LIHTC program must incorporate this change in how they calculate annual income as well.

## **Questions for HUD**

Does this change apply only to people who begin to receive deferred Veteran's disability benefits after July 30, 2008? Does it also apply to people who were already receiving deferred Veteran's disability benefits on July 30, 2008?

This provision is effective for income determinations completed after July 30, 2008.

## ***Exclusion of Military Housing Allowance from Annual Income in Specified Counties***

At a qualified building located within a county experiencing a significant increase in service personnel, the owner of an LIHTC property must exclude the basic housing allowance from the annual income calculation for a military family. A qualified building means any building located in a county with a qualified military installation to which the number of military personnel assigned to units based out of the military installation has increased by at least 20 percent between December 31, 2005 and June 1, 2008 or, or any county adjacent to such a county.

A qualified military institution means any military installation or facility which had at least 1,000 military personnel assigned to it on June 1, 2008.

On September 17, 2008, the IRS issued Notice 2008-79 addressing the impact of the Act on the tax-exempt, private activity bond program. In the notice, they listed the counties currently impacted by this provision. You can download a copy of this notice by going to [www.lizbramletconsulting.com](http://www.lizbramletconsulting.com) and clicking on the page Housing Act of 2008.

This change in how to calculate annual income for an applicant or resident does not apply to the Section 8 or public housing programs.

This provision is effective for buildings placed in service after July 30, 2008 and before January 1, 2012.

## ***Continued Eligibility for Students Who Received Foster Care Assistance***

A student who has been part of the foster care system is not considered to be a full-time student within the LIHTC program.

## **Questions for the IRS**

How does an owner document that a person has been part of the foster care system? What documentation must be in a resident's file? Will the documentation requirements be set on a state-by-state basis?

Is there a limitation on how old a person can be who has been part of the foster care program and be exempt from the LIHTC student rule?

Is there a limit as to how long it has been since a person was in the foster care system and be exempt from the LIHTC full-time student rule?

This provision is effective for eligibility determinations made after July 30, 2008.

### ***Collection of Resident Information***

Each state agency shall furnish to the HUD Secretary, at least annually, information concerning the race, ethnicity, family composition, age, annual income, receipt of rental assistance, disability status, and monthly rental payments for residents of LIHTC properties. State agencies are instructed to collect the information through existing reporting mechanisms and in a manner that minimizes the burden on property owners. Information provided by a household in a previous year may be used if it is of a type that is not subject to change or if it is not readily available for the current year.

Currently, NCSHA is working with HUD to establish a system for the states to utilize to collect the information that HUD needs to comply with this requirement. Although this provision is effective immediately, owners are not responsible for providing the information until receiving instructions as to how to supply the data to their HFA. Owners, however, should make plans for how they can collect the required information. It is assumed that most HFAs will incorporate this provision into their existing processes for receiving the owner's annual certification of compliance.

### **Questions for the IRS**

How can an owner collect this information on an annual basis if they are not completing annual recertifications?

Are owners of 100 percent LIHTC properties required to collect this information on an annual basis in lieu of completing annual recertifications?

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